

1-1 By: Ellis S.B. No. 529  
1-2 (In the Senate - Filed February 12, 2013;  
1-3 February 20, 2013, read first time and referred to Committee on  
1-4 Business and Commerce; March 4, 2013, reported favorably by the  
1-5 following vote: Yeas 9, Nays 0; March 4, 2013, sent to printer.)

1-6 COMMITTEE VOTE

|      | Yea          | Nay | Absent | PNV |
|------|--------------|-----|--------|-----|
| 1-7  |              |     |        |     |
| 1-8  | Carona       | X   |        |     |
| 1-9  | Taylor       | X   |        |     |
| 1-10 | Eltife       | X   |        |     |
| 1-11 | Estes        | X   |        |     |
| 1-12 | Hancock      | X   |        |     |
| 1-13 | Lucio        | X   |        |     |
| 1-14 | Van de Putte | X   |        |     |
| 1-15 | Watson       | X   |        |     |
| 1-16 | Whitmire     | X   |        |     |

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the creation of the offense of installation, transfer,  
1-20 use, or possession of an automated sales suppression device or  
1-21 phantom-ware.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subtitle B, Title 10, Business & Commerce Code,  
1-24 is amended by adding Chapter 326 to read as follows:

1-25 CHAPTER 326. AUTOMATED SALES SUPPRESSION DEVICES; PHANTOM-WARE

1-26 Sec. 326.001. DEFINITIONS. In this chapter:

1-27 (1) "Automated sales suppression device" means a  
1-28 device or software program that falsifies an electronic record,  
1-29 including transaction data or a transaction report, of an  
1-30 electronic cash register or other point-of-sale system. The term  
1-31 includes a device that carries the software program or an Internet  
1-32 link to the software program.

1-33 (2) "Electronic cash register" means a device or  
1-34 point-of-sale system that maintains a register or documentation  
1-35 through an electronic device or computer system that is designed to  
1-36 record transaction data for the purpose of computing, compiling, or  
1-37 processing retail sales transaction data.

1-38 (3) "Phantom-ware" means a hidden programming option  
1-39 that is embedded in the operating system of an electronic cash  
1-40 register or hardwired into an electronic cash register and that may  
1-41 be used to create a second set of transaction reports or to  
1-42 eliminate or manipulate an original transaction report, which may  
1-43 or may not be preserved in a digital format, to represent the  
1-44 original or manipulated report of a transaction in the electronic  
1-45 cash register.

1-46 (4) "Transaction data" includes data identifying an  
1-47 item purchased by a customer, a price for an item, a taxability  
1-48 determination for an item, a segregated tax amount for an item, an  
1-49 amount of cash or credit tendered for an item, a net amount of cash  
1-50 returned to a customer who purchased an item, a date or time of a  
1-51 purchase, a receipt or invoice number for a transaction, and a  
1-52 vendor's name, address, or identification number.

1-53 (5) "Transaction report" means a report that:

1-54 (A) contains documentation of each sale, amount  
1-55 of tax or fee collected, media total, or discount void at an  
1-56 electronic cash register and that is printed on a cash register tape  
1-57 at the end of a day or a shift; or

1-58 (B) documents every action at an electronic cash  
1-59 register and is stored electronically.

1-60 Sec. 326.002. AUTOMATED SALES SUPPRESSION DEVICES AND  
1-61 PHANTOM-WARE PROHIBITED; CRIMINAL OFFENSE. (a) A person commits

2-1 an offense if the person knowingly sells, purchases, installs,  
2-2 transfers, uses, or possesses an automated sales suppression device  
2-3 or phantom-ware.

2-4 (b) An offense under this section is a state jail felony.

2-5 SECTION 2. Subdivision (2), Article 59.01, Code of Criminal  
2-6 Procedure, is amended to read as follows:

2-7 (2) "Contraband" means property of any nature,  
2-8 including real, personal, tangible, or intangible, that is:

2-9 (A) used in the commission of:

2-10 (i) any first or second degree felony under  
2-11 the Penal Code;

2-12 (ii) any felony under Section 15.031(b),  
2-13 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or  
2-14 35, Penal Code;

2-15 (iii) any felony under The Securities Act  
2-16 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

2-17 (iv) any offense under Chapter 49, Penal  
2-18 Code, that is punishable as a felony of the third degree or state  
2-19 jail felony, if the defendant has been previously convicted three  
2-20 times of an offense under that chapter;

2-21 (B) used or intended to be used in the commission  
2-22 of:

2-23 (i) any felony under Chapter 481, Health  
2-24 and Safety Code (Texas Controlled Substances Act);

2-25 (ii) any felony under Chapter 483, Health  
2-26 and Safety Code;

2-27 (iii) a felony under Chapter 153, Finance  
2-28 Code;

2-29 (iv) any felony under Chapter 34, Penal  
2-30 Code;

2-31 (v) a Class A misdemeanor under Subchapter  
2-32 B, Chapter 365, Health and Safety Code, if the defendant has been  
2-33 previously convicted twice of an offense under that subchapter;

2-34 (vi) any felony under Chapter 152, Finance  
2-35 Code;

2-36 (vii) any felony under Chapter 32, Human  
2-37 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
2-38 involves the state Medicaid program;

2-39 (viii) a Class B misdemeanor under Chapter  
2-40 522, Business & Commerce Code;

2-41 (ix) a Class A misdemeanor under Section  
2-42 306.051, Business & Commerce Code;

2-43 (x) any offense under Section 42.10, Penal  
2-44 Code;

2-45 (xi) any offense under Section 46.06(a)(1)  
2-46 or 46.14, Penal Code;

2-47 (xii) any offense under Chapter 71, Penal  
2-48 Code; ~~or~~

2-49 (xiii) any offense under Section 20.05,  
2-50 Penal Code; or

2-51 (xiv) an offense under Section 326.002,  
2-52 Business & Commerce Code;

2-53 (C) the proceeds gained from the commission of a  
2-54 felony listed in Paragraph (A) or (B) of this subdivision, a  
2-55 misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii) of  
2-56 this subdivision, or a crime of violence;

2-57 (D) acquired with proceeds gained from the  
2-58 commission of a felony listed in Paragraph (A) or (B) of this  
2-59 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),  
2-60 (xi), or (xii) of this subdivision, or a crime of violence;

2-61 (E) used to facilitate or intended to be used to  
2-62 facilitate the commission of a felony under Section 15.031 or  
2-63 43.25, Penal Code; or

2-64 (F) used to facilitate or intended to be used to  
2-65 facilitate the commission of a felony under Section 20A.02 or  
2-66 Chapter 43, Penal Code.

2-67 SECTION 3. This Act takes effect September 1, 2013.

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